

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the
Family Foster Care License of
Joyce Johnson

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on March 19, 2003, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN. At the request of the parties the record remained open for additional submissions until April 18, 2003.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, 525 Portland Avenue South, Minneapolis, MN 55415, appeared for the Minnesota Department of Human Services.

Ruth A. Gaydos, Esq., 301 Fourth Avenue South, Suite 270, Minneapolis, MN 55415, appeared for Joyce Johnson.

NOTICE

This Report is a recommendation, **not** a final decision. The Commissioner of Human Services will make a final decision after reviewing the administrative record, and may adopt, reject or modify these Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2. The record closes upon the filing of comments, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Should Joyce Johnson's license to provide interim foster care be revoked?

The Administrative Law Judge concludes that the Commissioner should revoke Ms. Johnson's license for violation of rules requiring adequate supervision of children in care.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Joyce Johnson is a resident of Hennepin County who has had a license to provide interim foster care for up to three children at a time since August 27, 1998.^[1] She has provided foster care for ten children since becoming licensed.^[2] Johnson is a single mother of two boys, now ages 9 and 2. Her nine-year-old son lives with his father but usually visits her on weekends.

2. On July 17, 2001, two brothers, ages 7 and 5, were placed in her home. By the end of the month, F.C., a 13-year-old girl, also was placed in Johnson's home.^[3] At the time, Johnson was working approximately 16 hours per week at Sun Country Airlines. She informed her licensing worker in August 2001, during a relicensing foster home study, that she had a person coming into the home to watch the children while she was at work.^[4]

3. From the end of July 2001 to approximately September 4, 2001, the 13-year-old foster child, F.C., regularly watched the foster brothers for at least two to three hours per day until Johnson got home from work at 5:30 or 6:00 p.m. Occasionally on Saturday afternoons, F.C. also watched the foster brothers, as well as Johnson's older son, for up to three hours while Johnson ran errands.^[5]

4. On Thursday, August 30, 2001, at 12:38 p.m., F.C.'s child services worker, Christina Johnson,^[6] phoned Joyce Johnson's home. F.C. answered the phone and stated that Joyce Johnson was not there and that F.C. was baby-sitting for the other children.^[7] On September 4, 2001, the child services worker phoned Joyce Johnson and informed her "of the rule about foster kids not being allowed to baby-sit other foster kids. Let her know also that it is probably not appropriate given [the issues concerning F.C. and the boys]." The notes of the child services worker reflect that Joyce Johnson said it was an emergency one-time thing and would not happen again.^[8]

5. The "rule" the licensing worker referred to is not an adopted rule but a statement contained at page 101 of the Hennepin County Foster Care Guide, providing that foster children are not permitted to baby-sit for other foster children.

6. Joyce Johnson recalls no mention in this conversation of any rule prohibiting babysitting for other foster children. She understood the child services worker to say that it was not appropriate to have F.C. baby-sit because she was uncomfortable with it and was not ready for the responsibility.

7. The child services worker did not inform Joyce Johnson's foster care licensing worker that Joyce Johnson had been allowing F.C. to baby-sit for the other children. She did document the conversation and her advice to Joyce Johnson in a memo kept on the computerized system pertaining to child protection contacts (SSIS).^[9]

8. The two foster brothers, J.W. and J.W., left Joyce Johnson's home within a few days of November 27, 2001.^[10]

9. In approximately February 2002, the licensing worker who had been assigned to Joyce Johnson since 1998 told Johnson that she would be retiring. At some point before the licensing worker retired, Joyce Johnson talked to her about turning a basement family room into another bedroom. The licensing worker gave Johnson the impression that it would be all right as long as Johnson, rather than any foster children, slept in the basement bedroom. The licensing worker thought that it would be better for teenage children to sleep on the second floor, so they could not slip out through a window at night unnoticed.^[11] Joyce Johnson proceeded with plans to remodel the basement, at a cost of approximately \$10,000.

10. In mid-April 2002, another set of foster brothers, R.D., age 11, and P.D., age 8, were placed in Joyce Johnson's home.^[12] At this time, and possibly even earlier, Joyce Johnson began having F.C. baby-sit for P.D. and R.D. on a regular basis for two or three hours after school until Joyce Johnson returned home from work.^[13] She also babysat on occasional Saturday afternoons for the foster children and Joyce Johnson's children.

11. In early May 2002, Joyce Johnson met her new licensing worker, Donna Mienk, when Mienk went to Johnson's home to conduct a quarterly review.^[14] Marie Jones, another licensing worker, accompanied Donna Mienk on this home visit, and both workers questioned whether Johnson could adequately supervise the foster children if she were sleeping two floors away from them in the basement.^[15]

12. By letter dated May 29, 2002, Donna Mienk informed Joyce Johnson that she had consulted her supervisor, Caroline Stevens, who felt that the proposed sleeping arrangements would not provide adequate supervision as required by Minn. R. 9545.0190.^[16] According to Stevens, the arrangement would work only if (1) Joyce Johnson posted and discussed a fire safety plan with the children, and (2) the children were at least 10 years of age and of the same sex.^[17]

13. Joyce Johnson had already commenced construction on the remodeling project and was upset that she was receiving conflicting messages from the licensing workers.^[18] As a result, Joyce Johnson made several phone calls to the Department of Human Services and other county licensing workers in an attempt to get a consistent answer as to whether her plan should be considered adequate.^[19] Johnson's calls to obtain advice from others were irritating to Mienk and her supervisor.

14. While staying with Joyce Johnson, F.C. had become close to Johnson's adult niece, Monica Williams. Williams is the person approved by the Department to

provide substitute care for foster children placed in Johnson's home. During the summer of 2002, Johnson had become concerned that F.C. was spending too much time at the neighborhood park and was excessively interested in the boys there as opposed to the park activities. Johnson began restricting F.C.'s park privileges as a method of discipline for other behavior problems. As a consequence, F.C. became very angry with Joyce Johnson and formed the unfounded belief that she could go live with Monica Williams if she got Johnson in trouble.^[20] She wanted Joyce Johnson to lose her foster care license.^[21]

15. Sometime in early July 2002, F.C. either created or inserted herself into a dispute of a personal nature between Monica Williams and Joyce Johnson. Joyce Johnson learned about F.C.'s contribution to this dispute during a telephone conversation with Monica Williams on or about July 5, 2002. F.C. was present in the hallway with Joyce Johnson as she spoke on the phone to Williams; during this conversation, Joyce Johnson became very angry and told F.C. to "step back, all the way back" into her room and referred to F.C. as a "damn liar." F.C. interpreted this statement as being physically threatening. F.C. went to her room and started packing her bags. Joyce Johnson told F.C. that "if she was too grown to stay in a child's place she would have to go."^[22]

16. The following Monday morning, July 8, 2002, F.C. called her child services worker from school and said she wanted to leave Johnson's home because Johnson had threatened her. When interviewed by the child services worker later that day, F.C. reported that Joyce Johnson had called her a profane name, told her to "step back or I will hurt you," and told her to pack her bags. F.C. also reported that F.C. has often been left to baby-sit for Johnson's children and the other foster children, sometimes late at night. F.C. said that Johnson had left her alone with the children Friday, Saturday, and Sunday nights over the Fourth of July weekend.

17. Joyce Johnson denied ever physically threatening F.C. but acknowledged to the child services worker that she had left the children at night, not often and only for a few hours at a time.^[23]

18. The child services worker wrote up a contract during this visit, in which F.C. and Joyce Johnson agreed, among other things, that F.C. would not baby-sit for any children, Joyce Johnson would not say anything that could be taken as a physical threat, and F.C. would not be left home without an adult present after 10:00 p.m.^[24] The child services worker intended the placement to continue until summer school ended in two to three weeks, as long as both were abiding by the contract. She began looking for a new foster home for F.C. She noted her belief that F.C. was likely being untruthful or exaggerating in some respects in her statements about Johnson, because she had a history of making false allegations against foster parents, but because Joyce Johnson had confirmed leaving the children alone at night she forwarded the complaint to Foster Care Licensing for investigation.^[25]

19. On July 9, 2002, Joyce Johnson phoned the child services worker for R.D. and P.D. and asked if R.D. could be left alone for a few hours or if R.D. could baby-sit

for P.D. [26] Joyce Johnson stated that she knew F.C. could not baby-sit the other foster children, so she wanted to know if R.D. could do it, and she requested permission to have R.D. baby-sit for P.D. for 2 hours twice each month if she left after the children fell asleep. Johnson stated that on the previous Friday she had left at 11:00 p.m. for one and one-half hours, and she wanted permission to do this twice each month. Johnson appeared to believe that this was a discretionary decision for each child services worker. The worker informed Joyce Johnson that she would check into her inquiries and get back to her.

20. The child services worker for the boys interviewed them on July 11, 2002. [27] P.D. reported that F.C. baby-sat for them “all the time” and that R.D. now baby-sits. He said that Joyce Johnson had told the boys that “Russell is now in charge.” P.D. told his child services worker that that F.C. hits him when she is babysitting, which was confirmed by his brother. R.D. reported that F.C. baby-sits them approximately two times per week.

21. On July 16, 2002, Donna Mienk and Caroline Stevens visited Joyce Johnson’s home to investigate F.C.’s allegations. [28] During the home visit, Joyce Johnson admitted that F.C. did baby-sit for the other children, but she stated that she did not know it was prohibited and thought it was a discretionary decision based on the worker’s opinion and F.C.’s level of maturity. Joyce Johnson further admitted that she had left all of the children alone at night for one to two hours. At the end of the visit, the licensing workers had decided to issue a correction order. They intended to require Johnson to hire an appropriate adult babysitter. They informed her that the agency must approve all future babysitters. [29]

22. After further consideration, and after becoming aware of Christine Johnson’s SSIS memo indicating that she had informed Johnson about the Hennepin County “rule” concerning the babysitting of other foster children, the licensing workers decided to recommend revocation of Johnson’s license. The investigation report determined that Joyce Johnson had failed to obtain prior approval of a supervision plan for the foster children in violation of Minn. R. 9545.0130; failed to supervise the foster children in violation of Minn. R. 9545.0190, subp. 4; allowed a foster child to baby-sit other foster children in violation of the Hennepin County Foster Care Guide at page 101; failed to work and cooperate with the County in violation of Minn. R. 9545.0090; failed to abide by the terms of the foster parent agreement in violation of Minn. R. 9545.0100; and verbally abused a foster child in violation of Minn. R. 9545.0160. [30] The licensing workers found that no determination could be made regarding other alleged violations.

23. By letter dated August 21, 2002, the County recommended that the Commissioner of Human Services revoke Joyce Johnson’s foster care license for the reasons discussed above. [31]

24. On August 19, 2002, P.D. and R.D. slept overnight at Joyce Johnson’s nephew’s house. [32] The nephew is not a licensed provider, is not approved to provide substitute care, and Joyce Johnson did not seek approval from Donna Mienk for the overnight visit.

25. Despite the clear direction given on July 16 that the licensing worker was to approve all future babysitters, Joyce Johnson maintained she was not aware she had to obtain prior approval because an earlier licensing worker had told her prior approval was not needed for out-of-home overnights.^[33]

26. The licensing worker drafted a complaint form, finding that Joyce Johnson had failed to obtain agency approval for substitute care in violation of Minn. R. 9545.0010, subp. 13, and failed to obtain approval of a supervision plan (for a substantial amount of time) in violation of Minn. R. 9545.0130.^[34] Because Hennepin County had already taken action to revoke Johnson's license, it determined that no further action was necessary with regard to this violation.^[35]

27. Despite the agreement reached with F.C.'s licensing worker on July 8, 2002, in which she agreed that F.C. would not do any babysitting for any children, Johnson had F.C. babysit after that date for up to one hour during the daytime.^[36]

28. The County removed F.C., R.D. and P.D. from Joyce Johnson's home in mid-September 2002.^[37] All three children were upset about leaving her home.

29. By Order of Revocation dated October 1, 2002, the Department revoked Joyce Johnson's family foster care license based upon the substantiated claims in the July 2002 complaint.^[38] The letter informed Joyce Johnson of her right to submit a written appeal of the revocation within ten days, which she did by letter dated October 4, 2002.^[39]

30. The Department issued a Notice of and Order for Hearing on October 9, 2002, setting the hearing to take place on January 7, 2003. Following a failed attempt at settlement negotiations, the hearing was continued to March 19, 2003.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Pursuant to Minn. Stat. § 245A.07, subd. 1, this is a contested case hearing regarding revocation of a family foster care license. Failure, inability, or refusal to comply with parts 9545.0010 to 9545.0260 shall be cause for denial, nonrenewal, or revocation of license.^[40]

4. It is the Commissioner's burden to demonstrate reasonable cause to believe that Licensee failed to comply fully with applicable law or rule. If the Commissioner demonstrates reasonable cause existed, then Licensee must show by a

preponderance of the evidence that she fully complied with the law or rule at the time of the alleged violations.^[41]

5. Minn. R. 9545.0130 provides that when all adults in the foster family home are employed or otherwise occupied for substantial amounts of time away from home, the plans for care and supervision of the foster children must be approved in advance by the agency.

6. The Department has demonstrated reasonable cause to believe that Joyce Johnson violated Minn. R. 9545.0130 by failing to have the agency approve in advance the plans for care and supervision of foster children after school until Johnson arrived home from work. Johnson has not demonstrated that she fully complied with the rule.

7. Minn. R. 9545.0190, subp. 4, provides that foster children shall be adequately supervised at all times.

8. The Department has demonstrated reasonable cause to believe that Joyce Johnson violated Minn. R. 9545.0190 by failing to ensure that foster children were adequately supervised after school and by leaving them alone at night. Johnson has not demonstrated that she fully complied with the rule.

9. Minn. R. 9545.0160 provides that no foster child shall be subjected to physical or psychological abuse. In defining satisfactory compliance, the rule further provides that no child in care shall be subjected to verbal abuse, derogatory remarks about the child, or threats to expel the child from the foster home. The Department has not demonstrated reasonable cause to believe Joyce Johnson verbally abused F.C. or threatened to expel her from the foster home.

10. Minn. R. 9545.0090 provides that in evaluating the qualities of foster care applicants, each family shall be evaluated for a number of essential elements, including the ability to work with the agency and other community resources.^[42] The Department has demonstrated reasonable cause to believe that Joyce Johnson violated Minn. R. 9545.0090 in that she disregarded the advice of the agency as to the propriety of having F.C. assume substantial responsibility for the care of other foster children and Johnson's own children, and she has disregarded explicit directions to have baby-sitters approved in advance by the agency. Joyce Johnson has not demonstrated that she fully complied with this rule.

11. The Department has not demonstrated reasonable cause to believe that Joyce Johnson violated Minn. R. 9545.0090 by seeking additional input from the Department and others about her plans to remodel a basement bedroom. Efforts to resolve conflicting advice from licensing workers should not be viewed as the licensee's inability to work with the agency.

12. Minn. R. 9545.0100 provides that foster families and agencies must be able to work in partnership. Applicants and agencies must sign and abide by the terms of the Foster Parent Agreement. The Department has not demonstrated reasonable

cause to believe that Joyce Johnson violated the foster parent agreement.^[43] The contract signed on July 8, 2002, was not the foster parent agreement but was rather a document intended to clarify for F.C. and Johnson what their respective responsibilities were for the remaining weeks of F.C.'s residence in Johnson's home. Joyce Johnson failed, however, to comply with the terms of this agreement. Her violation of this agreement was considered above in determining that the Department demonstrated a violation of Minn. R. 9545.0090.

13. In determining whether to take negative action with regard to a license, the Commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of the persons served by the program.^[44]

14. The Department has shown that revocation of Joyce Johnson's license is appropriate given the nature, chronicity, and severity of the violations and the effect of the violation on the health, safety, or rights of persons served by the program. Johnson failed to adequately supervise children in care, both after school and at night. While the children suffered no serious harm, one foster child was subjected to mistreatment by F.C. All of them could have been harmed in any number of dangerous scenarios created by Johnson's absence.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner affirm the revocation of Joyce Johnson's family foster care license based upon: (1) her failure to obtain prior agency approval of the plans for care and supervision of the foster children, (2) her failure to adequately supervise foster children, and (3) her inability or refusal to accept the agency's determination that F.C. should not baby-sit for other children.

Dated: May 19, 2003

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Minnesota Department of Health is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded. No transcript prepared.

MEMORANDUM

The rules concerning whether foster children are permitted to do any baby-sitting in foster homes are murky. The foster parent agreement does not address babysitting. The Department's rules do not address babysitting directly, but appear to contemplate that some babysitting may be permissible, as long as supervision is adequate, because foster homes are required to provide adolescents with opportunities for "participation and accountability in a family relationship."^[45] Hennepin County has a policy appearing at page 101 of the Foster Parent Guide stating that:

Foster children may not babysit other foster children. You may use your own judgment concerning whether to allow a foster child to babysit your own children. Foster children may babysit neighbors' children if you receive prior approval from the foster child's social worker about this.

The County has another policy on the same page of the Foster Parent Guide providing that "You must notify your licensing social worker when you plan to use a babysitter for 24 or more consecutive hours." The record reflects that licensing workers interpret this rule to cover all overnight babysitting, regardless of how many consecutive hours of babysitting are involved.^[46]

The issue that was of paramount concern to the licensing workers was compliance with the Hennepin County Foster Care Guide. The Administrative Law Judge is concerned by the County's reliance on an unadopted rule that contains provisions more restrictive than those in existing statute or rule, as a basis for recommending revocation of a foster care license. The fact that new foster care parents are required to pass a test on the contents of the guide is not sufficient to bring the guide into the realm of enforceable rule.

Nonetheless, Johnson's own testimony during the hearing established that she did violate the Department's rules. She used F.C. as her primary after-school babysitter for other foster children for substantial periods of time, without obtaining advance approval in violation of Minn. R. 9545.0130 and 9545.0190, subp. 4. It is clear that F.C. was not ready for this responsibility, because while babysitting she physically mistreated one of the other foster children. Johnson also left the children unsupervised at night more than once over the weekend of July 5 through 7, 2002, in violation of Minn. R. 9545.0190. Her violation of these rules is sufficient to justify revocation of her license.

Foster children are in care because their own families have not been able to safely and adequately care for them. When they are placed in foster care, they should not be required to assume the substantial responsibilities of caring for others as the price of having a home.

K.D.S.

^[1] See Ex. 1; Minn. R. 9545.0030.

^[2] Testimony of Joyce Johnson.

^[3] See Ex. 21; Testimony of Joyce Johnson.

^[4] Ex. 21.

^[5] Testimony of Joyce Johnson.

^[6] A child services worker is assigned to each foster child in placement.

^[7] Ex. 2.

^[8] Ex. 3.

^[9] Ex. 3.

^[10] Ex. 24.

^[11] Testimony of Joyce Johnson. The other bedrooms in Joyce Johnson's house are on the second floor.

^[12] Ex. 20.

^[13] Joyce Johnson testified that F.C. resumed babysitting "a few months" after the conversation with Christina Johnson in September 2001. Johnson did have other foster children placed in her home, including a 6-year-old girl who was placed there in January 2002, but there was no testimony about F.C. babysitting for her. Johnson clearly testified that F.C. babysat for P.D. and R.D. after school and on some Saturday afternoons.

^[14] Ex. 4.

^[15] *Id.*

^[16] Ex. 5.

^[17] *Id.*

^[18] Testimony of Joyce Johnson.

^[19] *Id.*

^[20] Testimony of Joyce Johnson; Affidavit of Shawn Kenton. Kenton is F.C.'s appointed counsel in child protection matters. At the request of counsel for Joyce Johnson and the Department, Kenton questioned F.C. concerning factual issues in this proceeding. Counsel agreed to accept F.C.'s responses as reported by Kenton in lieu of live testimony by F.C. Kenton Aff. ¶¶ 2-3.

^[21] Affidavit of Shawn Kenton.

^[22] Testimony of Joyce Johnson.

^[23] Ex. 7; Affidavit of Shawn Kenton ¶ 4(f)-(h).

^[24] Ex. 8.

^[25] Ex. 10. Testimony of Caroline Stevens.

^[26] Ex. 6.

^[27] Ex. 9.

^[28] Caroline Stevens accompanied Donna Mienk because Mienk was new to the job and concerned that she would be unable to answer Joyce Johnson's questions about the complaint.

^[29] Testimony of Caroline Stevens.

^[30] Ex. 10.

^[31] Ex. 11.

^[32] Exs. 12, 13.

^[33] Testimony of Joyce Johnson.

^[34] Ex. 12.

^[35] Ex. 16.

^[36] Affidavit of Shawn Kenton.

^[37] Testimony of Caroline Stevens.

^[38] Ex. 14.

^[39] Ex. 15.

^[40] Minn. R. 9545.0020, subp. 14.

^[41] Minn. Stat. § 245A.08, subd. 3(a).

[\[42\]](#) Minn. R. 9545.0090, part B(12).

[\[43\]](#) Ex. 1.

[\[44\]](#) Minn. Stat. § 245A.07, subd. 1.

[\[45\]](#) Minn. R. 9545.0210, subp. 4.

[\[46\]](#) Testimony of Caroline Stevens.